IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 433 OF 2005

Chaturbhuj s/o.Shivbhajan Shukla. ... Appellant.
Versus.
Municipal Corporation of Greater
Mumbai and another. ... Respondents.

Shri A.M.Saraogi for the Appellant.

Ms.Geeta Joglekar for the Respondent No.1.

Mr.Jain for the Respondent No.2.

CORAM : ABHAY S. OKA, J.

DATED : 6th May, 2005.

P.C.:

1. Heard Shri Saraogi for the Appellant, Shri Jain for the Respondent No.2 and Ms.Joglekar for the Respondent No.1.

2. At the outset Shri Jain tenders apology on behalf of the Respondent No.2 for the statements made by the him before the Court. The apology is accepted.

3. The Appellant has tendered an affidavit in which he has stated that he wants to apply for regularisation and he will withdraw the suit filed by him before the trial Court. The affidavit is taken on record and marked "X" for identification. The learned Advocate for the Appellant states that the structure may be protected for sometime to enable the Corporation to consider the

application for regularisation.

4. The prayer made by the Appellant is strongly opposed by the Advocates appearing for the Respondents Nos.1 and 2. It is submitted that the structure is unauthorised and therefore, indulgence should not be granted.

5. As the suit is being unconditionally withdrawn, considering the facts and circumstances of the case the Appellant can be granted protection for a reasonable time to enable him to approach the Corporation for regularisation of the structure and the Corporation to consider the application for regulation.

6. Hence the following order is passed:

(i) The undertakings contained in the affidavit filed today by the Appellant are accepted.

(ii) L.C.Suit No.1249 of 2005 filed by the Appellant is dismissed as withdrawn.

(iii) If the Application for regularisation is filed in accordance with the Rules by the Appellant within a period of six weeks from today to the concerned authority of the Respondent No.1-Corporation, the same shall be considered by the said authority within a period of 8

weeks from the date of receipt of the Application. The order passed on the Application shall be communicated to the Applicant within a period of one week from the date of passing of the order.

(iv) If the Application for regularisation is made within six weeks from today, the Respondent No.1-Corporation will not take action of demolition against the disputed structure for a period of 18 weeks from today. If the Application for regularisation is not made within the period of six weeks from today, the Respondent No.1-Corporation will be free to take action in accordance with the law.

(v) The Appeal from order is disposed of in the above terms with no order as to costs.

(vi) The original IOD and the sanctioned plan be returned to the Respondent No.1-Corporation forthwith.

(vii) The parties and the concerned authority of the Respondent No.1-Corporation to act on an authenticated copy of this order.

Judge.